



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2020-0489; FRL-8691-02-R3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia;

Nonattainment New Source Review Requirements for 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Department of Energy and Environment (DOEE) of the District of Columbia (the District). The revision will fulfill the District's Nonattainment New Source Review (NNSR) SIP element requirement for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS). EPA is approving the revision to the District of Columbia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2020-0489. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Matthew Willson, Permits Branch (3AD10),

Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5795. Mr. Willson can also be reached via electronic mail at Willson.Matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 11, 2021 (86 FR 8734), EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia. In the NPRM, EPA proposed approval of the District's NNSR Certification for the 2015 8-hour ozone NAAQS. The formal SIP revision was submitted by the District on May 5, 2020. Specifically, the District certified that its existing NNSR program, covering the District portion of the Washington, DC-MD-VA Nonattainment Area (Washington Area) for the 2015 8-hour ozone NAAQS, is at least as stringent as the requirements at 40 CFR 51.165, as amended by the final rule titled "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements" (SIP Requirements Rule), for ozone and its precursors. See 83 FR 62998 (December 6, 2018).

On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). 80 FR 65292 (October 26, 2015). Under EPA's regulations at 40 CFR 50.19, the 2015 8-hour ozone NAAQS is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.070 ppm.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Washington Area was classified as marginal nonattainment for the 2015 8-hour ozone NAAQS on June 4, 2018 (effective August 3, 2018) using 2014-2016 ambient air quality data. 83 FR 25776. On December 6, 2018, EPA issued the final SIP Requirements Rule, which establishes the

requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. 80 FR 65291, October 26, 2015. Areas that were designated as marginal ozone nonattainment areas are required to attain the 2015 8-hour ozone NAAQS no later than August 3, 2021. 40 CFR 51.1303 and 83 FR 10376, March 9, 2018.

Based on initial nonattainment designations for the 2015 8-hour ozone NAAQS, as well as the December 6, 2018 final SIP Requirements Rule, the District was required to develop a SIP revision addressing certain CAA requirements for the Washington Area, and submit to EPA a NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2015 8-hour ozone NAAQS (i.e., August 3, 2021). See 83 FR 62998 (December 6, 2018). EPA is approving the District's May 5, 2020 NNSR Certification SIP revision for the 2015 8-hour ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

This rule is specific to the District's NNSR requirements. NNSR is a preconstruction review permit program that applies to new major stationary sources or major modifications at existing sources located in a nonattainment area. The specific NNSR requirements for the ozone NAAQS are located in 40 CFR 51.160 through 51.165.

The District's SIP approved NNSR program, established in Chapters 1 (Air Quality—General Rules) and 2 (Air Quality—General and Nonattainment Area Permits) in Title 20 of the District of Columbia Municipal Regulations (DCMR), applies to the construction and modification of major stationary sources in nonattainment areas. In its May 5, 2020 SIP revision, the District certifies that the versions of 20 DCMR Chapters 1 and 2 approved in the SIP are at least as stringent as the Federal NNSR requirements for the Washington Area. EPA last approved revisions to the District's major NNSR SIP on July 5, 2019. In that action, EPA approved revisions to the District's SIP which made DOEE's NNSR program consistent with Federal requirements. 84 FR 32072, July 5, 2019. No public comments were received on the

NPRM.

III. Final Action

EPA is approving the District's May 5, 2020 SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for the Washington Area. EPA has concluded that the District's submission fulfills the 40 CFR 51.1114 revisions requirement, meets the requirements of CAA section 110 and 172 and the minimum SIP requirements of 40 CFR 51.165.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action pertaining to the District’s NNSR program and the 2015 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: July 28, 2021

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470, the table in paragraph (e) is amended by adding an entry for “2015 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)” at the end of the table to read as follows:

§ 52.470 Identification of plan.

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * * *				
2015 8-Hour Ozone Certification for Nonattainment New Source Review (NNSR)	The District of Columbia	05/05/20	[insert date of publication in the Federal Register], [insert Federal Register citation]	

[FR Doc. 2021-16534 Filed: 8/4/2021 8:45 am; Publication Date: 8/5/2021]